



west virginia department of environmental protection

Division of Mining and Reclamation
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Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
dep.wv.gov

March 24, 2010

Certified Return Receipt

Jacks Branch Coal Company
300 Morgan Massey Drive
Jullian, WV 25529

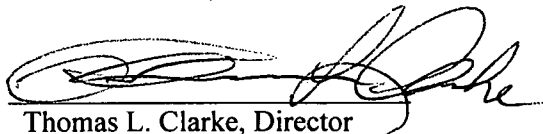
Re: Application for Modification No. 16
Of NPDES Permit No. WV0093912
Seeking Extension of a Compliance Schedule
For Selenium

Dear Permittee:

This letter is to advise you of the West Virginia Department of Environmental Protection's decision to DENY your application for Modification No. 16 of NPDES Permit No. WV0093912, seeking an extension of the compliance schedule for selenium that is part of this permit.

The WVDEP finds that the public comment period on the draft permit for this modification that is mandated by 47 CSR 30, section 10.2.a.2.A, cannot be completed before final effluent limitations for selenium will be in effect. Therefore, the modification sought by this application cannot be granted without violating the anti-backsliding prohibition of the federal Clean Water Act and the state Water Pollution Control Act and regulations. Also, The WVDEP finds that "good cause" to grant an extension of the existing selenium compliance schedule, as required by 47 C.S.R. § 30 - 8.2.c.2.D, does not exist in the case of this application and this permit. During the time of the existing compliance schedule, the effort you have taken on the ground on this permit has been limited to the implementation of a pilot scale treatment project. This pilot scale treatment project was initiated and discontinued after a short time. There has been no other attempt to treat the effluent at any outlet requiring treatment. By your failure to undertake anything more than token action to comply during the existing compliance schedule, the WVDEP cannot conclude that events over which you have little or no control have prevented you from complying.

You may appeal this decision to the Environmental Quality Board in accordance with West Virginia Code §§ 22B-1-1 through -12.


Thomas L. Clarke, Director
Division of Mining and Reclamation

cc: Environmental Inspector
Regional Office File
Headquarters NPDES File

Promoting a healthy environment.

PLAINTIFFS' EXHIBIT 12